

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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AMERICAN CIVIL LIBERTIES UNION;	:	CIVIL ACTION
	:	
Plaintiffs,	:	NO. 98-5591
	:	
v.	:	
	:	
ALBERTO R. GONZALES, in his official capacity as	:	
ATTORNEY GENERAL OF THE UNITED STATES,	:	
	:	
Defendant.	:	
-----X		

JOINT MOTION TO AMEND CASE MANAGEMENT ORDER

Pursuant to Local Rule 7.1, the parties jointly move this Court to amend the Case Management Order (Pretrial Order No. 21). For the good cause set forth below, the parties respectfully request that this Court amend the Case Management Order to extend, *inter alia*, the cut-off date for factual discovery from March 1, 2006 to March 31, 2006; the exchange of principal expert reports from March 15, 2006 to May 3, 2006; and the trial date from October 2, 2006 to October 30, 2006. A Proposed Order is attached.

The parties have exercised due diligence in working to comply with existing deadlines. With one possible exception, all party depositions have either been completed or are scheduled for completion prior to March 1, 2006. Moreover, the parties have served over twenty (20) third parties with deposition subpoenas, and a number of those third parties have consented to be deposed prior to the March 1 deadline. However, the parties seek these extensions because, notwithstanding ongoing efforts to negotiate

compliance, resistance by some third parties to subpoenas for documents and depositions has made compliance with the existing Case Management Order unfeasible.

Thus far, two third parties have moved to quash subpoenas for documents or depositions, and others have indicated an intent to do so unless they are granted additional time. American Express has objected to the scope and timing of Plaintiffs' subpoena and deposition notice and, unless an accommodation is reached, it is unlikely that that litigation will be completed and deposition taken before the factual discovery cut-off date. Google Inc. has moved to quash Defendant's subpoena, and a hearing on that motion has been scheduled for March 13, 2006, beyond the factual discovery cut-off. Because the materials sought from Google would be of assistance to Defendant in the preparation of his principal expert reports, this discovery dispute implicates the existing March 15, 2006 date for exchange of principal expert reports.

The parties agree that an extension of the factual discovery cut-off date until March 31, 2006 is necessary and warranted to permit the resolution of third-party litigation and to prevent additional third-party litigation. Further, an extension of the date for exchange of principal expert reports is necessary and warranted so that both parties' experts may review the third-party depositions conducted within the factual discovery cut-off date and prepare expert reports that would be of maximum assistance to the Court. In addition, if Defendant prevails in compelling Google to comply with his subpoena, Google's disclosure likely will not be completed until April 2006, and Defendant's experts will require some time to integrate them into their expert reports. Because these two proposed extensions will render compliance with other dates in the Case

Management Order impossible, the parties have proposed additional modifications, as set forth in the attached Order.

For the reasons set forth herein, this Court should grant the joint motion to amend the Case Management Order.

Respectfully submitted,

FOR PLAINTIFFS

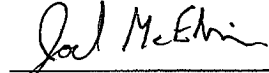


DATE: February 15, 2006

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